IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 968 (MS) OF 2004

Smt. Poonam Bhagat .....Petitioner.

Versus

A.D.J./IIIrd F.T.C., Haridwar and Others. .....Respondents.
Counsel for the petitioner, Sri Manish Arora.
Standing Counsel for the respondent no.1.

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 2nd August, 2004 passed by the respondent no. 1 in Original Suit No. 322 of 2002 (Smt. Poonam Bhagat Vs. Surendra Bhagat and Others).

Briefly stated, the suit was filed by the plaintiff Smt. Poonam Bhagat and others praying for partition of the property in dispute to the extent of 1/6th share. During the pendency of the case, the petitioner has filed the application under Order 40 Rule 1 of the Code of Civil Procedure. The objections were filed by the defendants.

The learned Additional District Judge has held that the plaintiff has claimed 1/6th share in the property described in Schedule B in the plaint. Defendants have stated that the share of plaintiff is 1/8th in the property.

The Trial Court has directed that the defendant shall pay 1/8 portion of the income of the dispute property to the

plaintiff and shall submit statement of income and expenditure in the Trial Court quarterly. The issues have yet to be framed in the case.

Order 40 Rule 1 of the Code of Civil Procedure provides that where is appears to the court to be just and convenient, may appoint a receiver of any property and confer upon such receiver all such powers as to bringing and defending the status and for resolution, management, protection, preservation and amendment of the property and also for the collection of the rent and profits thereof.

By the impugned order, the learned Judge has directed that from the income of the property 1/8th share may be given to the petitioner.

Counsel for the petitioner has submitted that in the suit itself he has made the prayer for 1/6th share and therefore, the profit of 1/8th share from the income will prejudice his right in the ultimate decision of the suit itself. However, it is made clear that whatever share has been directed to be paid to the petitioner, the same shall be subject to the final disposal of the suit itself.

However, interim order by which 1/8th share has been given will not come in the way of the petitioner while deciding the suit itself finally.

However, the court below shall frame the issue, while deciding the suit for partition with regard to the share of the parties after taking evidence on the record.

However, the court below shall expedite the hearing of the suit itself within a period of 9 months as the suit relates to the year, 2002.

Subject to the aforesaid observation, writ petition is disposed of.

(RAJESH TANDON, J.)

13.10.2004

P.S.R.